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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,904	07/05/2001	Tatsuo Fukui	109686	1427

25944 7590 03/19/2004

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EXAMINER

STOCK JR, GORDON J

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/897,904

Applicant(s)

FUKUI, TATSUO

Examiner

Gordon J Stock

Art Unit

2877

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 4, 6 and 7.

Claim(s) rejected: 3, 5, 8 and 9.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
10. ☐ Other: _____


ZANDRA V. SMITH
PRIMARY EXAMINER

Continuation of 2. NOTE: Claim 8's limitation, "the rotationally asymmetric aberration for every selected area is symmetric" requires further search. Though a new search is needed due to the amending of claim 8 from "may be symmetric" to "is symmetric," Examiner will additionally respond to the Remarks of March 3, 2004. In regards to the Remarks concerning the 112 second and first paragraph rejections, Examiner agrees with arguments and in light of the amendment to the claims withdraws the 112 second and first paragraph rejections. As for the remarks in regards to the rejections with the Takahiko reference (JP 08-115874) and in light of the amendment of the claims Tahahiko no longer reads on the newly amended claims. In regards to the status of 4, 6, and 7, since claim 4 has had the 112 second and first paragraphs rejections withdrawn, it now would be objected to for depending on a rejected base claim. Claims 6 and 7 depend on rejected base claims but contain allowable subject matter as claim 4, the asymmetric focus characteristic being symmetric. In regards to claim 9, there were no arguments included in the Remarks. So rejection remains. Remarks to claims 3 and 5 are not found persuasive for the claims cite "the line and space mark pattern" which does not exclude a whole line and space mark pattern. In addition, Figs. 7 and 8 of Sugaya (5,754,299) suggests that a single line and space are used because the Sa of Fig. 7 is utilized.